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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/641,378

Applicant(s)

SCHIEK, JAMES W.

Examiner

Annette F. Dixon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This Office Action is in response to the amendment filed on August 21, 2006. Examiner acknowledges claims 1-17 are pending in this application, with claims 1-3, 5, 7, 8, 11-17 having been amended.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 12, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 2,185,834 to Creper.

Regarding claims 1 and 17, Creper discloses a support belt adapted for encircling and being secured to the waist of a wearer for providing both back and abdominal muscle support during strenuous activity while providing a non-interfering support and a non-interfering fit with the skeletal structure of the ribs and hips of the wearer, the belt comprising:

a. an elongate base (10) having a longitudinal axis and opposite outer ends (at 25, 29) and of a length sufficient to encircle the waist of the wearer, the base including an enlarged back support area (15) and an enlarged abdominal support area (16), each area of a first fixed predetermined vertical height and each area being integral within the

base, the areas being disposed within the base such that the areas are opposite one another when the belt is encircling the waist of the wearer (see Figure 1);

b. reduced side areas (13, 14) within the base, having a second predetermined vertical height smaller than said first predetermined vertical height and disposed intermediately of the back support and abdominal support areas and opposite one another between the hips and ribs of the wearer when the belt is encircling the waist, said reduced side areas being sized to allow the belt to be sufficiently tightened against the back and abdominal walls without encountering the skeletal structure of the ribs or hips of the wearer thereby evenly distributing and providing optimum support to both the back and abdominal walls and accommodate bending and side-to-side motion of the wearer (col. 2, lines 10-17); and

c. a first fastening means (24) for releasably securing the belt to encircle the waist of the wearer.

Regarding claim 12 (filed 1/28/04), Creper discloses a support belt adapted for encircling and being secured to the waist of a wearer for providing both back and abdominal muscle support during: strenuous activity while providing a non-interfering support and a non-interfering fit with the skeletal structure of the ribs and hips of the wearer, the belt comprising:

a. an elongate base (10) having a longitudinal axis and opposite outer ends (at 25, 29) and of a length sufficient to encircle the waist of the wearer, the base including an enlarged back support area (15) and an enlarged abdominal support area (16), each area having its own first fixed predetermined vertical height, the areas being disposed

on the base such that the areas are opposite one another when the belt is encircling the waist of the wearer;

b. reduced side areas (13, 14) on the base having a second predetermined vertical height smaller than said first predetermined vertical height of either support area and disposed intermediately of the back support and abdominal support areas and opposite one another between the hips and ribs of the wearer when the belt is encircling the waist, said reduced side areas being sized to allow the belt to be sufficiently tightened against the back and abdominal walls without encountering the skeletal structure of the ribs or hips of the wearer thereby evenly distributing and providing support to both the back and abdominal walls and to accommodate bending and side-to-side motion of the wearer; and

c. a releasably securable fastener (24) disposed on said base to permit said opposite outer ends to be secured adjacent one another when the belt is encircling the waist of the wearer.

Regarding claim 15, Creper discloses that the enlarged abdominal support area comprises an enlarged first abdominal support portion (left end, Figure 2) located on one outer end (25) of the base; and an enlarged second abdominal support portion (right end, Figure 2) located on the other outer end (29) of the base.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Creper in view of U.S. Patent Number 4,964,401 to Taigen.

Creper discloses the previously described support belt having a first fastening means (24). Creper discloses that the first fastening means further comprise a first pad portion (left end, Figure 2) at one end (25) of the base; and a second pad portion (right end, Figure 2) disposed at the other outer end (29) of the base, the first and second pad portions adapted to be placed in overlying, releasably secured relationship with one another when the belt is encircling the waist of the user (see Figure 1). Creper discloses that the first pad comprises a first fastener (24), and the second pad portion comprises a second fastener (26/27/28) complementary with the first fastener. Creper does not specify that the first and second fasteners be pads of complementary hook-and-loop material.

Taigen discloses a support belt having a first pad portion (left end, Figure 1-2) at one end of the base; and a second pad portion (right end, Figure 1-2) disposed at the other outer end of the base, the first and second pad portions adapted to be placed in overlying, releasably secured relationship with one another when the belt is encircling the waist of the user (see Figures 3 and 6). Taigen specifies that the first pad portion comprises a first hook and loop fastener pad (38), and the second pad portion

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comprises a second hook and loop fastener pad (40) complementary with the first fastener pad, to provide an initial self-gripping securement of the belt to the user.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the support belt disclosed by Creper, wherein the complementary fasteners on the first and second pad portions are hook-and-loop fastener pads, as taught by Taigen, to provide an initial self-gripping securement of the belt to the user.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Creper in view of U.S. Patent Number 1,600,027 to Wesland.

Creper discloses the previously described support belt. Creper does not specify that the belt include utility rings.

Wesland discloses a support belt (10) having conventional utility rings (11) for securement and safety, capable of securing the belt directly to an implement to be moved or lifted.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the support belt disclosed by Creper, wherein the support belt includes utility rings, as taught by Wesland, to provide added securement and safety to the belt.

7. Claims 7, 8, 11, 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Creper in view of U.S. Patent Number 4,964,401 to Taigen.

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Creper discloses a support belt adapted for encircling and being secured to the waist of a wearer for providing both back and abdominal muscle support during strenuous activity while providing a non-interfering fit with the skeletal structure of the ribs and hips of the wearer, the belt comprising:

- a. an elongate base (10) having a longitudinal axis and opposite outer ends (at 25, 29) and made of a flexible material (loosely woven canvas) to accommodate the various movements of the waist and associated placement of the hips and ribs of the wearer;
- b. an enlarged back support area (15) having a first fixed predetermined vertical height and integral within the base such that the area supports the back of the wearer when the belt is encircling the waist of the wearer (see Figure 1);
- c. an enlarged first abdominal support portion located on one outer end (25) of the base and having a fixed predetermined vertical height substantially the same as the first fixed predetermined vertical height of the back support and positioned to define an abdominal support area opposite the back support area and located in the vicinity of the abdominal wall of the wearer when the belt is encircling the waist;
- d. an enlarged second abdominal support portion located on the other outer end (29) of the base and the first abdominal support portion located on one outer end of the base and having a fixed predetermined vertical height coexistent with said first abdominal support height and positioned such that the abdominal support area is diametrically opposite the back support area and is located in the vicinity of the abdominal wall of the wearer when the belt is encircling the waist, said abdominal



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support portions adapted to be located in overlying relationship with one another when the belt is encircling the waist (see Figure 1, 3)

e. reduced side sections (13, 14) of the base having a second predetermined vertical height smaller than said first predetermined vertical height and located on the base intermediately of the back support and abdominal support areas and opposite one another between the hips and ribs of the wearer when the belt is encircling the waist, said reduced side areas being sized to allow the belt to be sufficiently tightened against the back and abdominal walls without encountering the skeletal structure of the ribs or hips of the wearer thereby evenly distributing and providing optimum support to both the back and abdominal walls (col. 2, lines 10-17); and

a fastening means for releasably securing the belt to encircle the waist of the wearer. Creper does not specify that the fastening means comprise an elongate strap of material.

Taigen discloses a support belt to be secured about the waist of a user, having an elongate base (10) with opposite outer ends, and comprising an elongate strap (56) of flexible, generally non-stretchable material secured adjacent one base end and coaxial with the base, and having a free end (at 58); and a fastening means (buckle, 50) secured to the other base end and adapted to receive said elongated strap and to cinch said strap to fit when the belt is placed around the waist of the wearer (see Figure 3), to provide tenacious and certain securement of the belt to the user. Taigen also discloses a hook and loop fastener pad (58) on the strap, and a second hook and loop fastener

pad (54) on the base of the belt that is complementary with the first pad, to secure the free end of the strap to the belt.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the support belt disclosed by Creper, wherein the fastening means on the belt comprises an elongate strap and a fastening means to receive and cinch the strap, as taught by Taigen, to provide tenacious and certain securement of the belt to the user.

Creper in view of Taigen discloses the previously described support belt. Creper does not specify vertical height of the portions of the support belt.

However, at the time the invention was made, it would have been an obvious matter of design choice to one of ordinary skill in the art to have made the belt disclosed by Creper with the claimed dimensions, or any other dimensions deemed appropriate to securely fit the support belt to a selected user, because Applicant has not disclosed that such dimensions provide an advantage, are used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Creper's orthosis and Applicant's invention to perform equally well with either the dimensions used by Creper, or the claimed dimensions because both dimensions would perform the same function of securing the belt to the selected user.

Therefore, it would have been *prima facie* obvious to modify Creper in view of Taigen to obtain the invention as specified in the claims because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Creper in view of Taigen.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Creper in view of Taigen and in view of U.S. Patent Number 1,600,027 to Wesland.

Creper in view of Taigen discloses the previously described support belt. Creper does not specify that the belt include utility rings.

Wesland discloses a support belt (10) having conventional utility rings (11) for securement and safety, capable of securing the belt directly to an implement to be moved or lifted.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the support belt disclosed by Creper in view of Taigen, wherein the support belt includes utility rings, as taught by Wesland, to provide added securement and safety to the belt.

### ***Response to Arguments***

9. Applicant's arguments filed August 21, 2006 have been fully considered but they are not persuasive. Applicant asserts that prior art Creper does not teach or fairly suggest "a belt where the enlarged front portion has a height less than the enlarged back portion" (Pages 10 and 11) and asserts there is no motivation to combine the prior art references of Taigen and Wesland with prior art Creper and do not teach maximum support during strenuous activity.

Regarding Applicant's belt structure, nowhere in Applicant's specification is there any limitation suggesting the front portion has a height less than the back portion of the belt. Nor is there any such limitation found within Applicant's drawings or the claimed

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subject matter. In Applicant's remarks, page 12, Applicant refers to claims 1 and 12 having the limitation of "reduced side areas within the base, having a second predetermined vertical height smaller than said first predetermined vertical height and disposed intermediately of the back support and the abdominal support areas..." From a close reading of Applicant's specification, Examiner has understood this claim language to correspond to reduced portions (20 and 22). Applying this understanding to the prior art belt of Creper, Creper discloses reduced portions (the region surrounding elements 13 and 23) wherein in the belt has cinched portions between the back (18) and stomach (16) regions of the belt. Thus, the prior art device of Creper does satisfy the claim limitations as currently recited by the Applicant.

Regarding Applicant's assertion of non-analogous art for prior art references Taigen and Wesland. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the belts of Taigen and Wesland are utilized by the Examiner to teach the securement means for adding additional support to the user when the support belt is being worn. Regarding Applicant's assertion that the prior art devices do not provide maximum support during strenuous activity. Examiner reminds Applicant, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to

patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

As a result of these aforementioned responses to Applicant's arguments, Examiner has found Applicant's argument to be non-persuasive in nature and has maintained the rejection of claims 1-15.

10. The declaration under 37 CFR 1.132 filed August 21, 2006 is insufficient to overcome the rejection of claims 1-15 based upon insufficiency of disclosure under 35 U.S.C. 112, first paragraph as set forth in the last Office action because: Applicant's arguments and showing of the declaration are not commensurate in scope with the claims of the present invention. (Please see *Response to Arguments*).

It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.

Regarding the sales data provided by the Applicant, though Applicant asserts that the commercial success of the belt "is not attributable to factors such as advertising, name and trademark recognition, or distribution networks" (Applicant's declaration page 2), it must be noted that the increase in sales of one product versus another product depends on many factors including but not limited to marketing and the influences of hospital and doctors on patient purchases, and there is no evidence that the sales are not a result from marketing or advertisement.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Annette F Dixon  
Examiner  
Art Unit 3771



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